

1 SENATE BILL 128

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

3 INTRODUCED BY

4 Peter Wirth

5  
6  
7  
8  
9  
10 AN ACT

11 RELATING TO ELECTIONS; REQUIRING CERTAIN CAMPAIGN REPORTS TO BE  
12 FILED BIANNUALLY; CHANGING REPORTING REQUIREMENTS; RECONCILING  
13 MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 1997;  
14 AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 Section 1. Section 1-19-26 NMSA 1978 (being Laws 1979,  
18 Chapter 360, Section 2, as amended) is amended to read:

19 "1-19-26. DEFINITIONS.--As used in the Campaign Reporting  
20 Act:

21 A. "advertising campaign" means an advertisement or  
22 series of advertisements used for a political purpose and  
23 disseminated to the public either in print, by radio or  
24 television broadcast or by any other electronic means,  
25 including telephonic communications, and may include direct or

.174974.2

underscoring material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1 bulk mailings of printed materials;

2 B. "anonymous contribution" means a contribution  
3 the contributor of which is unknown to the candidate or [~~his~~]  
4 the candidate's agent or the political committee or its agent  
5 who accepts the contribution;

6 C. "bank account" means an account in a financial  
7 institution located in New Mexico;

8 D. "campaign committee" means two or more persons  
9 authorized by a candidate to raise, collect or expend  
10 contributions on the candidate's behalf for the purpose of  
11 electing [~~him~~] the candidate to office;

12 E. "candidate" means an individual who seeks or  
13 considers an office in an election covered by the Campaign  
14 Reporting Act, including a public official, who either has  
15 filed a declaration of candidacy or nominating petition or:

16 (1) for a non-statewide office, has received  
17 contributions or made expenditures of one thousand dollars  
18 (\$1,000) or more or authorized another person or campaign  
19 committee to receive contributions or make expenditures of one  
20 thousand dollars (\$1,000) or more for the purpose of seeking  
21 election to the office; or

22 (2) for a statewide office, has received  
23 contributions or made expenditures of two thousand five hundred  
24 dollars (\$2,500) or more or authorized another person or  
25 campaign committee to receive contributions or make

.174974.2

underscored material = new  
[bracketed material] = delete

1 expenditures of two thousand five hundred dollars (\$2,500) or  
2 more for the purpose of seeking election to the office or for  
3 candidacy exploration purposes in the years prior to the year  
4 of the election;

5 F. "contribution" means a gift, subscription, loan,  
6 advance or deposit of money or other thing of value, including  
7 the estimated value of an in-kind contribution, that is made or  
8 received for a political purpose, including payment of a debt  
9 incurred in an election campaign, but "contribution" does not  
10 include the value of services provided without compensation or  
11 unreimbursed travel or other personal expenses of individuals  
12 who volunteer a portion or all of their time on behalf of a  
13 candidate or political committee, nor does it include the  
14 administrative or solicitation expenses of a political  
15 committee that are paid by an organization that sponsors the  
16 committee;

17 G. "deliver" or "delivery" means to deliver by  
18 certified or registered mail, telecopier, electronic  
19 transmission or facsimile or by personal service;

20 H. "election" means any primary, general or  
21 statewide special election in New Mexico and includes county  
22 and judicial retention elections but excludes municipal, school  
23 board and special district elections;

24 I. "election year" means an even-numbered year in  
25 which an election covered by the Campaign Reporting Act is

.174974.2

1 held;

2 J. "expenditure" means a payment, transfer or  
3 distribution or obligation or promise to pay, transfer or  
4 distribute any money or other thing of value for a political  
5 purpose, including payment of a debt incurred in an election  
6 campaign or pre-primary convention, but does not include the  
7 administrative or solicitation expenses of a political  
8 committee that are paid by an organization that sponsors the  
9 committee;

10 K. "person" means an individual or entity;

11 L. "political committee" means two or more persons,  
12 other than members of a candidate's immediate family or  
13 campaign committee or a husband and wife who make a  
14 contribution out of a joint account, who are selected,  
15 appointed, chosen, associated, organized or operated primarily  
16 for a political purpose; and "political committee" includes:

17 (1) political action committees or similar  
18 organizations composed of employees or members of any  
19 corporation, labor organization, trade or professional  
20 association or any other similar group that raises, collects,  
21 expends or contributes money or any other thing of value for a  
22 political purpose;

23 (2) a single individual [~~who by his~~] whose  
24 actions [~~represents~~] represent that [~~he~~] the individual is a  
25 political committee; and

.174974.2

underscored material = new  
[bracketed material] = delete

1 (3) a person or an organization of two or more  
2 persons that within one calendar year expends funds in excess  
3 of five hundred dollars (\$500) to conduct an advertising  
4 campaign for a political purpose;

5 M. "political purpose" means influencing or  
6 attempting to influence an election or pre-primary convention,  
7 including a constitutional amendment or other question  
8 submitted to the voters;

9 N. "prescribed form" means a form or electronic  
10 format prepared and prescribed by the secretary of state;

11 O. "proper filing officer" means either the  
12 secretary of state or the county clerk as provided in Section  
13 1-19-27 NMSA 1978;

14 P. "public official" means a person elected to an  
15 office in an election covered by the Campaign Reporting Act or  
16 a person appointed to an office that is subject to an election  
17 covered by that act; and

18 Q. "reporting individual" means every public  
19 official, candidate or treasurer of a campaign committee and  
20 every treasurer of a political committee [~~and~~

21 ~~R. "statement of exception" or "statement" means~~  
22 ~~the prescribed form subscribed and sworn to by a candidate to~~  
23 ~~indicate that the candidate does not intend to raise or expend~~  
24 ~~the minimum amount required for the filing of a report of~~  
25 ~~expenditures and contributions as provided in Section 1-19-33~~

.174974.2

underscoring material = new  
[bracketed material] = delete

1 ~~NMSA 1978~~]."

2 Section 2. Section 1-19-27 NMSA 1978 (being Laws 1979,  
3 Chapter 360, Section 3, as amended) is amended to read:

4 "1-19-27. REPORTS REQUIRED--PROPER FILING OFFICER.--

5 A. Except for those candidates and public officials  
6 who file a statement of [~~exception in an election year pursuant~~  
7 ~~to Section 1-19-33 NMSA 1978~~] no activity, all reporting  
8 individuals shall [~~annually~~] file with the proper filing  
9 officer a report of expenditures and contributions on a  
10 prescribed form. [~~The report shall be filed on the second~~  
11 ~~Monday in May pursuant to the provisions of Subsection A of~~  
12 ~~Section 1-19-29 NMSA 1978.~~]

13 B. The proper filing officer for filing reports of  
14 expenditures and contributions by a political committee is the  
15 secretary of state.

16 C. The proper filing officer for filing reports of  
17 expenditures and contributions or statements of [~~exception~~] no  
18 activity is the secretary of state for all candidates and  
19 public officials.

20 D. The secretary of state shall develop or contract  
21 for services to develop an electronic reporting system for  
22 receiving and for public inspection of reports of expenditures  
23 and contributions and statements of [~~exception~~] no activity to  
24 the Campaign Reporting Act. The electronic reporting system  
25 shall:

.174974.2

underscored material = new  
[bracketed material] = delete

1 (1) enable a person to file reports online by  
2 filling out forms on the secretary of state's web site; and

3 (2) provide for encrypted transmissions."

4 Section 3. Section 1-19-28 NMSA 1978 (being Laws 1979,  
5 Chapter 360, Section 4, as amended) is amended to read:

6 "1-19-28. FURNISHING REPORT FORMS--POLITICAL  
7 COMMITTEES--CANDIDATES.--

8 A. The secretary of state annually shall furnish to  
9 all reporting individuals the prescribed forms for the  
10 reporting of expenditures and contributions, supplemental  
11 reports and a statement of [~~exception~~] no activity and the  
12 specific dates the reports and statement are due.

13 B. In addition to the provisions of Subsection A of  
14 this section, at the time of filing a declaration of candidacy  
15 or a nominating petition, the proper filing officer shall give  
16 the candidate the prescribed reporting forms and the schedule  
17 of specific dates for filing the required reports or a  
18 statement of [~~exception~~] no activity. The prescribed forms  
19 shall also be made available to all reporting individuals at  
20 the office of the secretary of state and in each county at the  
21 office of the county clerk."

22 Section 4. Section 1-19-29 NMSA 1978 (being Laws 1993,  
23 Chapter 46, Section 5, as amended) is amended to read:

24 "1-19-29. TIME AND PLACE OF FILING REPORTS.--

25 A. [~~Annually~~] Except as otherwise provided in this

.174974.2

underscoring material = new  
[bracketed material] = delete

1 section, all reporting individuals shall file with the proper  
2 filing officer by 5:00 p.m. on the second Monday in [~~May~~] April  
3 and October a report of all expenditures made and contributions  
4 received on or before the first Monday in [~~May~~] those months  
5 and not previously reported. The report shall be filed  
6 [~~annually~~] biannually until the reporting individual's bank  
7 account has been closed and the other provisions specified in  
8 Subsection F of this section have been satisfied.

9 B. In an election year, [~~in addition to the May~~  
10 ~~report~~] instead of the biannual reports provided for in  
11 Subsection A of this section, all reporting individuals, except  
12 for [~~persons who file a statement of exception pursuant to~~  
13 ~~Section 1-19-33 NMSA 1978, candidates who file a statement of~~  
14 ~~no activity and~~] public officials who are not candidates in an  
15 election that year, shall file reports of all expenditures made  
16 and contributions received or, if applicable, statements of no  
17 activity, according to the following schedule:

18 (1) by 5:00 p.m. on the second Monday in  
19 April, a report of all expenditures made and contributions  
20 received on or before the first Monday in April and not  
21 previously reported;

22 (2) by 5:00 p.m. on the second Monday in May,  
23 a report of all expenditures made and contributions received on  
24 or before the first Monday in May and not previously reported;

25 (3) by 5:00 p.m. on the second Monday in

underscored material = new  
[bracketed material] = delete

1 September, a report of all expenditures made and contributions  
2 received on or before the first Monday in September and not  
3 previously reported;

4 [~~(1)~~] (4) by 5:00 p.m. on the second Monday in  
5 October, a report of all expenditures made and contributions  
6 received on or before the first Monday in October and not  
7 previously reported;

8 [~~(2)~~] (5) by 5:00 p.m. on the Thursday before  
9 a primary, general or statewide special election, a report of  
10 all expenditures made and contributions received by 5:00 p.m.  
11 on the Tuesday before the election. Any contribution or pledge  
12 to contribute that is received after 5:00 p.m. on the Tuesday  
13 before the election and that is for five hundred dollars (\$500)  
14 or more in a legislative or non-statewide judicial election, or  
15 two thousand five hundred dollars (\$2,500) or more in a  
16 statewide election, shall be reported to the proper filing  
17 officer either in a supplemental report on a prescribed form  
18 within twenty-four hours of receipt or in the report to be  
19 filed by 5:00 p.m. on the Thursday before a primary, general or  
20 statewide special election, except that any such contribution  
21 or pledge to contribute that is received after 5:00 p.m. on the  
22 Friday before the election may be reported by 12:00 noon on the  
23 Monday before the election; and

24 [~~(3)~~] (6) by 5:00 p.m. on the thirtieth day  
25 after a primary, general or statewide special election, a

.174974.2

underscored material = new  
[bracketed material] = delete

1 report of all expenditures made and contributions received on  
2 or before the twenty-fifth day after the election and not  
3 previously reported.

4 C. If a candidate or public official has not  
5 received any contributions and has not made any expenditures  
6 since the candidate's or official's last report was filed with  
7 the proper filing officer, the candidate or official shall only  
8 be required to file a statement of no activity, which shall not  
9 be required to be notarized, in lieu of a full report when that  
10 report would otherwise be due and shall not be required to file  
11 a full report until the next required filing date occurring  
12 after an expenditure is made or a contribution is received.

13 D. ~~[Notwithstanding the other provisions of this~~  
14 ~~section, the report due on the thirtieth day after an election~~  
15 ~~need be the only report filed after the annual May report if~~  
16 ~~the candidate is not opposed in the election and if the report~~  
17 ~~includes all expenditures made and contributions received for~~  
18 ~~that election and not previously reported.] In an election~~  
19 year, a public official who is not a candidate shall file  
20 quarterly reports of expenditures made and contributions  
21 received or statements of no activity in accordance with the  
22 schedule provided for in Subsection A of this section.

23 E. A report of expenditures and contributions filed  
24 after a deadline set forth in this section shall not be deemed  
25 to have been timely filed.

.174974.2

underscored material = new  
[bracketed material] = delete

1 F. Except for candidates and public officials who  
2 file a statement of no activity, each reporting individual  
3 shall file a report of expenditures and contributions  
4 [~~annually~~] pursuant to the filing [~~schedule~~] schedules set  
5 forth in this section, regardless of whether any expenditures  
6 were made or contributions were received during the reporting  
7 period. Reports shall be required until the reporting  
8 individual delivers a report to the proper filing officer  
9 stating that:

- 10 (1) there are no outstanding campaign debts;  
11 (2) all money has been expended in accordance  
12 with the provisions of Section 1-19-29.1 NMSA 1978; and  
13 (3) the bank account has been closed.

14 G. Each treasurer of a political committee shall  
15 file a report of expenditures and contributions [~~annually~~]  
16 pursuant to the filing [~~schedule~~] schedules set forth in this  
17 section until the treasurer files a report that affirms that  
18 the committee has dissolved or no longer exists and that its  
19 bank account has been closed.

20 H. A reporting individual who is a candidate within  
21 the meaning of the Campaign Reporting Act because of the amount  
22 of contributions the candidate receives or expenditures the  
23 candidate makes and who does not ultimately file a declaration  
24 of candidacy or a nominating petition with the proper filing  
25 officer and does not file a statement of no activity shall

.174974.2

underscoring material = new  
[bracketed material] = delete

1 ~~[nevertheless file a report, not later than the second Monday~~  
2 ~~in May for a primary election or the second Monday in October~~  
3 ~~for a general election, of all contributions received and~~  
4 ~~expenditures made on or before the first Monday in May for a~~  
5 ~~primary election or the first Monday in October for a general~~  
6 ~~election and not previously reported]~~ file biannual reports in  
7 accordance with Subsection A of this section.

8 I. Reports required by this section shall be  
9 subscribed and sworn to by the candidate or the treasurer of  
10 the political committee. A report filed electronically shall  
11 be electronically authenticated by the candidate or the  
12 treasurer of the political committee using an electronic  
13 signature in conformance with the Electronic Authentication of  
14 Documents Act and the Uniform Electronic Transactions Act. For  
15 the purposes of the Campaign Reporting Act, a report that is  
16 electronically authenticated in accordance with the provisions  
17 of this subsection shall be deemed to have been subscribed and  
18 sworn to by the candidate or the treasurer of the political  
19 committee who was required to file the report.

20 J. Reports required by this section shall be filed  
21 electronically by all reporting individuals.

22 K. Reporting individuals may apply to the secretary  
23 of state for exemption from electronic filing in case of  
24 hardship, which shall be defined by the secretary of state."

25 Section 5. Section 1-19-32.1 NMSA 1978 (being Laws 1981,

.174974.2

underscored material = new  
[bracketed material] = delete

1 Chapter 331, Section 9, as amended) is amended to read:

2 "1-19-32.1. REPORTS EXAMINATION--FORWARDING OF  
3 REPORTS.--

4 A. The secretary of state shall conduct a thorough  
5 examination of at least ten percent of all reports filed during  
6 a year by reporting individuals, selected at random at least  
7 forty days after the general election and ten days after the  
8 [~~May~~] March reports are filed in a nonelection year, to  
9 determine compliance with the provisions of the Campaign  
10 Reporting Act. The examination may include an investigation of  
11 any discrepancies, including a cross-reference to reports filed  
12 by any other reporting individual. A reporting individual  
13 shall be notified in writing if a discrepancy is found in the  
14 report filed and shall be permitted to file a written  
15 explanation for the discrepancy within ten working days of the  
16 date of the notice. The notice, penalty and arbitration  
17 provisions set forth in Section 1-19-34.4 NMSA 1978 shall apply  
18 to examinations conducted under this section.

19 B. After the date stated in the notice of final  
20 action for submission of a written explanation, the secretary  
21 of state shall prepare an annual report of any unresolved  
22 discrepancies found after examination of the random sample  
23 provided for in Subsection A of this section. A copy of this  
24 report shall be transmitted to the attorney general for  
25 enforcement pursuant to the provisions of Section 1-19-36 NMSA

.174974.2

underscored material = new  
[bracketed material] = delete

1 1978. This report is a public record open to public inspection  
2 and subject to the retention and destruction provisions set  
3 forth in Section 1-19-32 NMSA 1978.

4 ~~[G. A county clerk shall deliver to the secretary~~  
5 ~~of state, within forty-eight hours of the county clerk's~~  
6 ~~receipt, each report of expenditures and contributions or~~  
7 ~~statement of exception filed with the county clerk's office.~~  
8 ~~Within forty-eight hours of receipt of a report of expenditures~~  
9 ~~and contributions or statement of exception filed by a~~  
10 ~~legislative candidate for a multicounty district, the secretary~~  
11 ~~of state shall deliver to each county clerk in the multicounty~~  
12 ~~legislative district a copy of the report or statement filed.]"~~

13 Section 6. Section 1-19-35 NMSA 1978 (being Laws 1979,  
14 Chapter 360, Section 11, as amended by Laws 1997, Chapter 12,  
15 Section 2 and also by Laws 1997, Chapter 112, Section 5) is  
16 amended to read:

17 "1-19-35. REPORTS AND STATEMENTS--LATE FILING PENALTY--  
18 FAILURE TO FILE.--

19 A. Except for the report required to be filed and  
20 delivered the Thursday prior to the election and any  
21 supplemental report, as required in Paragraph [~~2~~] (4) of  
22 Subsection B of Section 1-19-29 NMSA 1978, that is due prior to  
23 the election, and subject to the provisions of Section  
24 1-19-34.4 NMSA 1978, if a statement of [~~exception~~] no activity  
25 or a report of expenditures and contributions contains false or

.174974.2

underscored material = new  
[bracketed material] = delete

1 incomplete information or is filed after any deadline imposed  
2 by the Campaign Reporting Act, the responsible reporting  
3 individual or political committee, in addition to any other  
4 penalties or remedies prescribed by the Election Code, shall be  
5 liable for and shall pay to the secretary of state fifty  
6 dollars (\$50.00) per day for each regular working day after the  
7 time required by the Campaign Reporting Act for the filing of  
8 statements of [~~exception~~] no activity or reports of  
9 expenditures and contributions until the complete or true  
10 statement or report is filed, up to a maximum of five thousand  
11 dollars (\$5,000).

12 B. If any reporting individual files a false,  
13 intentionally incomplete or late report of expenditures and  
14 contributions due on the Thursday prior to the election, the  
15 reporting individual or political committee shall be liable and  
16 pay to the secretary of state five hundred dollars (\$500) for  
17 the first working day and fifty dollars (\$50.00) for each  
18 subsequent working day after the time required for the filing  
19 of the report until the true and complete report is filed, up  
20 to a maximum of five thousand dollars (\$5,000).

21 C. If a reporting individual fails to file or files  
22 a late supplemental report of expenditures and contributions as  
23 required in Paragraph [~~(2)~~] (5) of Subsection B of Section  
24 1-19-29 NMSA 1978, the reporting individual or political  
25 committee shall be liable for and pay to the secretary of state

.174974.2

underscored material = new  
[bracketed material] = delete

1 a penalty equal to the amount of each contribution received or  
2 pledged after the Tuesday before the election that was not  
3 timely filed.

4 D. All sums collected for the penalty shall be  
5 deposited in the state general fund. A report or statement of  
6 exception shall be deemed timely filed only if it is received  
7 by the proper filing officer by the date and time prescribed by  
8 law.

9 E. Any candidate who fails or refuses to file a  
10 report of expenditures and contributions or statement of  
11 [~~exception~~] no activity or to pay a penalty imposed by the  
12 secretary of state as required by the Campaign Reporting Act  
13 shall not, in addition to any other penalties provided by law:

14 (1) have [~~his~~] the candidate's name printed  
15 upon the ballot if the violation occurs before and through the  
16 final date for the withdrawal of candidates; or

17 (2) be issued a certificate of nomination or  
18 election, if the violation occurs after the final date for  
19 withdrawal of candidates or after the election, until the  
20 candidate satisfies all reporting requirements of the Campaign  
21 Reporting Act and pays all penalties owed.

22 F. Any candidate who loses an election and who  
23 failed or refused to file a report of expenditures and  
24 contributions or a statement of [~~exception~~] no activity or to  
25 pay a penalty imposed by the secretary of state as required by

.174974.2

underscoring material = new  
~~[bracketed material] = delete~~

1 the Campaign Reporting Act shall not be, in addition to any  
2 other penalties provided by law, permitted to file a  
3 declaration of candidacy or nominating petition for any future  
4 election until the candidate satisfies all reporting  
5 requirements of that act and pays all penalties owed."

6 Section 7. REPEAL.--Section 1-19-33 NMSA 1978 (being Laws  
7 1979, Chapter 360, Section 9, as amended) is repealed.

8 - 17 -

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25